

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

YELLOW CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11069 (CTG)

(Jointly Administered)

Ref. Docket Nos. 22, 391 & 394

**EAST WEST BANK’S (I) OMNIBUS OBJECTION REGARDING (A) THE
REJECTION PROCEDURES MOTION [DKT. NO. 391] AND (B) THE FIRST
OMNIBUS REJECTION MOTION [DKT. NO. 394] AND (II) RESERVATION OF
RIGHTS REGARDING THE BIDDING PROCEDURES MOTION [DKT. NO. 22]**

East West Bank (“East West”), a lessor of trailers and other mobile equipment (the “Equipment”) to the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby submits its (i) objection (this “Objection”) to (a) the *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving Procedures to Reject Executory Contracts and Unexpired Leases and (II) Granting Related Relief* (the “Rejection Procedures Motion”) [Dkt. No. 391] and (b) and the *Omnibus Motion of Debtors Seeking Entry of an Order (I) Authorizing (A) Rejection of Certain Executory Contracts and Unexpired Leases Effective as of the Dates Specified Herein and (B) Abandonment of Certain Personal Property, If Any, and (II) Granting Related Relief* (the “First Omnibus Rejection Motion”) [Dkt. No. 394], and (ii) its reservation of rights regarding the *Motion of the Debtors for Entry of an Order (I)(A) Approving Bidding Procedures for the Sale or Sales of the Debtors’ Assets; (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof; (C) Approving Assumption and Assignment Procedures, (D)*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/YellowCorporation>. The location of the Debtors’ principal place of business and the Debtors’ service address in these chapter 11 cases is: 11500 Outlook Street, Suite 400, Overland Park, Kansas 66211.

Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief (the "Bid Procedures Motion") [Dkt. No. 22].

In support thereof, East West respectfully states as follows:

RELEVANT BACKGROUND

I. The Debtors' Cases

1. On August 6, 2023 (the "Petition Date"), the Debtors commenced these chapter 11 cases (the "Chapter 11 Cases") by filing voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. Although the Debtors remain in full possession of their assets, they are in wind down mode and plan to liquidate their operations through these Chapter 11 Cases.

3. As set forth in greater detail in the *Declaration of Matthew A. Doheny, Chief Restructuring Officer of Yellow Corporation, in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") [Dkt. No. 14], the Debtors' fleet was comprised of, in addition to owned equipment, approximately 1,000 leased tractors and 7,200 leased trailers. First Day Declaration ¶ 14. Additionally, the Debtors' leased and owned equipment was housed at approximately 140 leased facilities spread across 300 communities. First Day Declaration ¶¶ 41-42.

II. The Parties' Master Lease Agreement

4. On or about August 17, 2016, East West, as lessor, and Debtor YRC Enterprise Services, Inc. ("YRC"), as lessee, entered into that certain *Master Lease Agreement* (as the same has been amended, restated, amended and restated, supplemented, revised, and otherwise modified

from time to time, and together with all schedules and attachments thereto, the “MLA”) pursuant to which certain Equipment was leased by East West to YRC.

5. Thereafter, as provided in the MLA’s terms and conditions, East West, as lessor, entered into multiple leases and related schedules with YRC. Certain of these leases and schedules included and provided for rights and obligations for certain affiliates of YRC, including Debtors YRC Inc., USF Holland LLC, USF Reddaway LLC and New Penn Motor Express LLC. Finally, in connection with the MLA, Debtor YRC Worldwide, Inc. (n/k/a Debtor Yellow Corporation), executed a *Guaranty*, dated as of August 17, 2016 in favor of East West with respect to YRC’s obligations under the MLA.

6. In accordance with the terms and conditions of the MLA, East West, as lessor, retains the title for all of the Equipment. Additionally, the MLA expressly provides that the Debtors, as lessees, have only a leasehold interest in the Equipment.

7. The leased Equipment consists of not less than 104 trailers, all of which are inherently moveable. East West has asked the Debtors to confirm where the Equipment is physically located, but as of the date of this filing, has not received any information from the Debtors with regard to the location of the Equipment.

8. The Debtors are currently in default of their monthly payment obligations under the MLA and related schedules. As of the Petition Date, and subject to further reconciliation, the outstanding and overdue aggregate balance owed to East West was at least \$34,968.68 (exclusive of any late charges, interest, liquidated damages, and attorneys’ fees). As of this filing, the Debtors have not paid East West any rent under the MLA and have not indicated when any such rent may be expected to be paid. As a result, this balance has only increased on a postpetition basis.

II. OBJECTION TO REJECTION PROCEDURES MOTION AND FIRST OMNIBUS REJECTION MOTION

9. The Rejection Procedures Motion requests approval of certain procedures (the “Rejection Procedures”) to be utilized by the Debtors in connection with the rejection of executory contracts and unexpired leases of nonresidential real property during these Chapter 11 Cases. The Rejection Procedures Motion further requests that the Court authorize the Debtors “to remove or abandon personal property of the Debtors, including, without limitation, equipment, fixtures, furniture and other personal property that may be located on, or may be installed in, leased premises that are subject to a rejected Contract on or before the effective date of any proposed rejection.” Rejection Procedures Motion ¶ 1; *see also* Proposed Order (the “Proposed Rejection Procedures Order”) ¶ 2(g). “Abandoned Property” is defined by the Proposed Rejection Procedures Order only in the most general terms as “property to be abandoned.” Proposed Rejection Procedures Order ¶ 2(a). Moreover, such Abandoned Property need only be generally described in the rejection notice. *See id.* at ¶ 2(g). If no timely objection is received, the Rejection Procedures would permit the Debtors to deem such property abandoned as of the rejection date and permit the landlord to dispose of the property without further liability. *Id.*

10. Neither the Rejection Procedures Motion nor the Proposed Rejection Procedures Order offers sufficient clarity regarding what property will be deemed able to be abandoned by the Debtors. The Debtors certainly may choose to abandon their owned personal property in connection with rejection of non-residential real property leases. However, any approval order (and any related rejection notice) should clearly state that no property belonging to third parties such as East West will be deemed abandoned to a landlord.

11. Moreover, the Debtors should clearly articulate their intent with regard to leased equipment located at rejected locations and provide clarity as to the location of the inherently

movable leased equipment. Absent such clarity, the Rejection Procedures and related notices are inadequate to provide East West with notice that a particular rejection materially impacts its interests and injects risk and confusion around whether various equipment is abandoned.

12. Consequently, East West requests, among other things, that the Proposed Rejection Procedures Order be revised to (i) require the Debtors to provide notice to any lessors of equipment (including East West) located on premises to be rejected by the Debtors that such rejection impacts the lessors' equipment, (ii) specifically identify the affected equipment in a manner sufficient to inform an equipment lessor of its interest, and (iii) provide that if leased premises where East West's Equipment is located are to be rejected by the Debtors, that the Debtors will work with East West to obtain access to the premises where such Equipment is located prior to the rejection of such premises.

13. Similarly, although East West is able, through counsel, to review the First Omnibus Rejection Motion, the listing of the thirty-seven (37) leases of nonresidential real property is functionally meaningless without any insight as to whether any of East West's Equipment may or may not be located at such premises. Through this Objection, East West reiterates its request that it be apprised of the location of its Equipment.

III. RESERVATION OF RIGHTS REGARDING BID PROCEDURES MOTION

14. Among other things, the Bid Procedures Motion requests the Court's approval of the Debtors' proposed bidding procedures (the "Bidding Procedures") for certain "Assets" defined to include "any owned *or leased* vehicles, tractors, trucks, trailers, tank trailer and other trailers, or similar vehicles and trailers, railroad cars, locomotives, stacktrains and other rolling stock (including superstructures and racks, the "Rolling Stock"). *See* Bidding Procedures, at 1-2 (emphasis added). The Equipment leased to the Debtors (which East West owns) would fall within

this definition of “Assets” that the Debtors may sell through these Chapter 11 Cases. While the Debtors could seek to assume and assign the MLA in accordance with the Bankruptcy Code’s requirements, the Debtors cannot sell East West’s Equipment without its permission.

15. At this time, East West cannot determine or confirm whether any proposed Sale Transaction in connection with the Bid Procedures Motion contemplates or will contemplate the sale or other transfer of all or a portion of its Equipment or the MLA (and/or the rights, benefits, and interests related thereto). East West, therefore, reserves its rights with respect to any Sale Transaction to the extent that the Debtors seek to assume and assign or otherwise transfer the MLA or any of East West’s Equipment (and/or the rights, benefits, and interests related thereto).

16. East West does not waive and expressly reserves all rights, claims, remedies and defenses and interests available under the MLA, and otherwise under applicable law. East West further reserves its right to object to any proposed sale or assumption and assignment of the MLA.

WHEREFORE, East West respectfully requests that the proposed orders entered in connection with the Rejection Procedures Motion and the First Omnibus Rejection Motion be modified so that they are consistent with the above and reserves all rights with respect to the Bid Procedures Motion.

Dated: September 8, 2023
Wilmington, Delaware

WILSON SONSINI GOODRICH & ROSATI, P.C.

/s/ Erin R. Fay

Erin R. Fay (No. 5268)
Catherine C. Lyons (No. 6854)
222 Delaware Avenue, Suite 800
Wilmington, Delaware 19801
Telephone: (302) 304-7600
E-mail: efay@wsgr.com
clyons@wsgr.com

Counsel for East West Bank